

### REMARKS

This responds to the Office Action mailed on June 9, 2005, and the references cited therewith.

Claim 2 is amended, claim 1 is canceled, and no claims are added; as a result, claim 2 remains pending in this application.

#### §102 Rejection of the Claims

Claim 1 was rejected under 35 U.S.C. § 102(b) as being anticipated by Rodgers. In order to expedite prosecution, claim 1 has been canceled without prejudice or disclaimer. Applicant believes claim 1 to be patentable, and reserves the right to reintroduce claim 1 in a continuing application.

#### §103 Rejection of the Claims

Claim 2 was rejected under 35 U.S.C. § 103(a) as being unpatentable Rodgers in view of Mortimer. In order for the Examiner to establish a *prima facie* case of obviousness, three base criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *M.P.E.P.* § 2142 (citing *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed.Cir. 1991)). Applicant respectfully submits that the cited references do not render claim 2 obvious, because claim 2 as amended contains elements not found in the cited references.

For example, claim 2 as amended recites:

aggregating the plurality of network data packets into a single protocol data unit; and

providing the protocol data unit to a network layer.

The Office Action admits that Rodgers does not disclose aggregating the plurality of network data packets into a single protocol data unit. The Office Action attempts to make up for the

deficiency in Rodgers by taking Official Notice that aggregating the plurality of network data packets into a single protocol data unit is old and well known, and cites Mortimer as evidence. Applicant respectfully disagrees with this interpretation of Mortimer. Mortimer discloses receiving a sequence of data packets, including an error correction packet that is used to correct errors in the sequence of data packets. However, Mortimer does not appear to disclose aggregating the corrected packets into a single protocol data unit. Additionally, neither Mortimer nor Rodgers teach or disclose providing the aggregated protocol data unit to a network layer such as a layer in a TCP/IP protocol stack. As a result, the combination of Rodgers and Mortimer fails to teach or disclose each and every element of Applicant's claim 2. Thus claim as amended is non-obvious with respect to the combination of Rodgers and Mortimer. Applicant respectfully requests reconsideration and the withdrawal of the rejection of claim 2.

**CONCLUSION**

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6954 to facilitate prosecution of this application.


If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

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By his Representatives,

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Date December 9, 2005 By   
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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 9th day of December, 2005.

Rodney L. Lacy

Name

Signature

